

order to determine the effect of the agent on the viscosity of the blood, then the present invention is considered obvious.

Applicant respectfully disagrees for the following reasons.

One primary objective of the present invention is to screen a material to determine its effect in altering the viscosity of the circulating blood of a living being by (1) introducing the material into the blood of a living being and then (2) utilizing a viscosity measuring instrument to measure the viscosity of the circulating blood of the living being after the material has had a chance to alter (if at all) the blood viscosity. As a result, the material's effects, if any, on the circulating blood is determined by measuring the viscosity of the circulating blood in vivo.

In contrast, the Braun, Sr. device must remove the blood from the living being and run repeated tests on various blood samples to find what amount of a particular substance is required to achieve clotting in the least amount of time. In particular, the important feature of the Braun, Sr. device is to determine what amount of a neutralizing substance will re-introduce clotting of the blood. To determine that, the Braun, Sr. device uses a plurality of fluid receiving chambers to collect a plurality of equal blood samples having respective amounts of the neutralizing substance therein. A ferromagnetic element is repeatedly raised and then allowed to fall and the time of fall for each run is recorded. As the blood begins to clot, the time it takes for the ferromagnetic element to stop increases. Thus, the one receiving chamber which reaches the longest stop time first designates the proper amount of neutralizing substance that will re-introduce clotting of the blood.

Braun, Sr. device makes no viscosity determination based on flow of the blood nor the flow of that blood over a range of shears. Instead, the Braun, Sr. device operates by

repeatedly cycling the ferromagnetic element until the first coagulation appears, i.e., until a particular high viscosity (i.e., coagulation of blood) of blood is encountered.

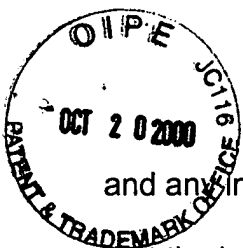
Secondly, although the Examiner rejected Claims 35-46 under §103(a) based on Braun, Sr. in view of Kron, the Examiner failed to explain the significance of citing Kron.

If Kron is being cited for the feature of seeking to find blood viscosity in vivo and if it is the Examiner's position that the Braun, Sr. device were to be modified to include the Kron operation, then there is no blood flow that could be detected because the plurality of blood samples in the cartridge 100 of the Braun, Sr. device are static samples and the only dynamic element is the ferromagnetic element. In other words, there is no flow of blood that is being detected, but rather only the time it takes the ferromagnetic element to fall through the static blood sample. Viscosity, by definition, is determined by the flow of the fluid being measured. So it would not be at all obvious to one skilled in the art how to use the flow detection scheme of Kron in the Braun, Sr. device.

Moreover, one skilled in the art would not even combine Kron with Braun Sr. because the in vivo testing suggested by Kron would ensure that the blood was immediately tested and fresh to avoid any coagulation; this would defeat the whole purpose of the Braun, Sr. device which is to determine which fluid receiving chamber experiences coagulation first.

Thus, for all of the above reasons, Applicant respectfully submits that Claims 35-46 distinguish over the art of record and respectfully requests that the §103(a) rejection be withdrawn.

Applicant acknowledges, with appreciation the allowance of Claims 47-51 if amended to be placed in independent form including all of the limitations of the base claim



and any intervening claims. However, for the reasons set forth above, Applicant submits that the base claim and the intervening claims are patentable over the art of record.

Applicant is mindful of the requirement to submit formal acceptable drawings and will do so upon the indication of allowability of this case.

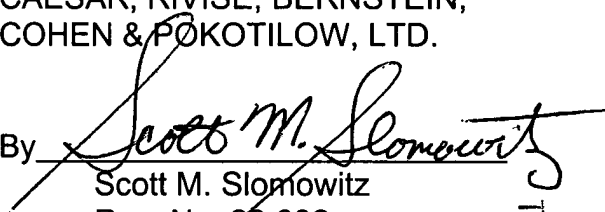
In view of the foregoing amendments and remarks, it is respectfully submitted that Claims 35-51 now appearing in this application are allowable and such favorable action is respectfully requested.

Respectfully submitted,

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#### CERTIFICATE OF MAILING

I hereby certify that the foregoing RESPONSE re Application Serial No. 09/440,429 is being deposited with the United States Postal Services as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, BOX NON-FEE AMENDMENT, Washington, D.C. 20231 on this 18<sup>th</sup> day of October, 2000.

  
Scott M. Slomowitz